

Initial Statement of Reasons
Consumer Confidence Report Regulations
Title 22, California Code of Regulations

All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (EPA) under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) as well as by the California Department of Health Services (Department) under the California Safe Drinking Act (Sections 4040.1 and 116300-116750, Health and Safety Code [H&S Code]). California has been granted “primacy” for the enforcement of the Federal Act. In order to receive and maintain primacy, states must promulgate regulations that are no less stringent than the federal regulations.

In accordance with federal regulations, California requires public water systems to sample their sources and have the samples analyzed for inorganic and organic substances in order to determine compliance with drinking water standards, also known as maximum contaminant levels (MCLs). Primary MCLs are based on health protection, technical feasibility, and costs. Secondary MCLs are based on consumer acceptance, using parameters such as odor, taste, and appearance as measures of acceptability. The water supplier must notify the Department and the public when a primary or secondary MCL has been violated and take appropriate action. Public water systems must also sample for a number of “unregulated” chemicals, as set forth in regulation.

California has also required community and nontransient-noncommunity water systems to distribute an annual water quality report pursuant to California Code of Regulations section 64463.1 for ten years. New federal regulations have been promulgated requiring a Consumer Confidence Report (Report); the Report is comparable to California’s annual water quality report, except for some differences in format and content requirements. Pursuant to federal primacy requirements and section 116470, H&S Code, the Department proposes the following regulations that would require water systems to distribute a Consumer Confidence Report (Report) in place of the annual water quality report, in accordance with the requirements in the federal regulations (40 CFR Parts 141 and 142; National Primary

Drinking Water Regulations: Consumer Confidence Reports, Federal Register 63(160), 44511-44536, August 19, 1998).

The Department proposes the following amendments to chapter 15, division 4, title 22 of the California Code of Regulations:

- To amend article 1 by adopting sections 64400.42 and 64400.44 with new definitions.
- To repeal section 64463.1 (Public Notification), article 19.
- To amend chapter 15 by adopting the following article and sections detailing consumer confidence report requirements---
- Article 20 Consumer Confidence Report (Report)
- Section 64480. Applicability and Distribution
- Section 64481. Content of the Consumer Confidence Report
 - Appendix 64481-A. Typical Origins of Contaminants with Primary MCLs.
 - Appendix 64481-B. Typical Origins of Contaminants with Secondary MCLs.
 - Appendix 64481-C. Health Effects Language for the Report – Microbiological Contaminants.
 - Appendix 64481-D. Health Effects Language for the Report – Radioactive Contaminants.
 - Appendix 64481-E. Health Effects Language for the Report – Inorganic Contaminants.
 - Appendix 64481-F. Health Effects Language for the Report – Volatile Organic Contaminants.
 - Appendix 64481-G. Health Effects Language for the Report – Synthetic Organic Contaminants.
- Section 64482. Required Additional Health Information..
- Section 64483. Report Delivery and Recordkeeping

The net effect would be that:

- Community and nontransient-noncommunity water systems would be required to distribute an annual Consumer Confidence Report in place of the annual water quality report.

Adoption of these requirements would satisfy the mandate in section 116570, H&S, and federal primacy requirements related to the adoption of regulations at least as stringent as the federal.

The following paragraphs describe and explain the proposed amendments. All references to 40 CFR 141 are to Federal Register 63(160), 44526-44535, August 19, 1998, unless otherwise stated.

Article 1. Definitions

64400.42. Customer

64400.44. Detected

The purpose of these proposed definitions is to provide clarification for the subsequent requirements. The first definition would be adopted in conformance with 40CFR 141.151(c); the term “billing unit” was omitted since in California, it is equivalent to service connection. The definition was also revised to include persons served by nontransient-noncommunity (NTNC) water systems; for consistence with the existing annual water quality report applicability, the proposed Report requirements will be applicable to both categories of systems. However, NTNC systems are defined by statute in terms of the number of persons served over a period of time, whereas community water systems are defined in terms of the number of service connections or the number of residents. For this reason, the term “persons” was used in place of service connection for the NTNC systems.

The second definition would also be adopted for conformance with federal regulations (40CFR 141.151(d)), but has been revised to reference the applicable state regulation to avoid confusion.

64463.1. Public Information.

The purpose of this section was to establish the requirements for an annual water quality report. This section would be repealed because the annual water quality report requirements would be replaced by the consumer confidence report requirements.

Article 20. Consumer Confidence Report (Report).

64480. Applicability and Distribution.

The purpose of this section is to establish which water systems must comply with the Report requirements and when. Subsection (a) would establish the applicability to community water systems in conformance with federal regulations (40CFR 141.153(a)); this subsection would also establish that the Report requirements apply to nontransient-noncommunity (NTNC) water systems for consistence with the existing applicability of the annual water quality report requirements. The Department believes that it is important that the NTNC systems continue to provide their customers with annual water quality information as they have for the past ten years. Subsection (a) would also establish the date of the first Report to be July 1, 2000, differing from the federal date of October 1, 1999; the difference is due to the fact that the October date has passed and, hence, if the date were not so revised, this requirement would be unenforceable. Subsections (b) and (c) would be adopted for conformance with federal regulations (40CFR 141.152(d)). These sections were revised to include the NTNC systems for consistency with the applicability of the Report requirements.

64481. Content of the Consumer Confidence Report.

The purpose of this section is to establish the primary content and format requirements for the Report.

- Subsection (a) and paragraphs (a)(1) and (2) would be adopted for conformance with federal regulations (40CFR 141.153(b), (b)(1) and (2)).
- Subsection (b) and paragraphs (b)(1) through (3) would be adopted for conformance with federal regulations (40CFR 141.153(c)). Since California has non-regulatory health guidance levels for contaminants in water which have historically been called “action levels” and this is not what is being referenced by the language in (b)(1), the Department proposes to add the word “regulatory” for clarification, so that water systems will know that the action levels being referenced are those in regulation (e.g., for lead and copper).

- The language in paragraphs (b)(4) and (5) are proposed pursuant to section 116470(a)(2), H&S Code. The definition for public health goal parallels the federal language for Maximum Contaminant Level Goal, since these are comparable levels; they are set by a state agency and are, therefore, so designated. The definition for primary drinking water standard is derived from section 116275(c), H&S Code.
- Paragraphs (b)(6) and (b)(7) would be adopted for conformance with federal regulations (40CFR 141.153(c)(3)(i) and (c)(2), respectively).
- Subsection (c) and paragraphs (c)(1) through (3) would be adopted for conformance with federal regulations (40CFR 141.153(d)(1)(i) through (iii)) with references revised to state regulation citations where applicable. The requirement for data inclusion would be extended to secondary MCL contaminants which differs from federal regulations. Although secondary MCLs are not implemented on the federal level, the Department does implement and enforce them; therefore, it is appropriate to include the associated data for the consumer's information.
 - The reference to federal regulations in paragraph (c)(3) is consistent with the federal approach in their regulations; the Department chose the same approach because the referenced regulations consist of an extensive set of monitoring and analytical methodology requirements for a federally-implemented data collection effort which has already been completed. There would be absolutely no benefit to incorporating the requirements themselves. The affected regulated community has already complied with the requirements and submitted their data to EPA. The reference is necessary to clearly identify the data that must be included in the Report.
 - Paragraph (c)(4) would be adopted to include data for sodium and hardness in the Report. After the first round of reports was distributed in 1990, the Department requested that drinking water systems include sodium and hardness data in their annual water quality reports in response to a number of calls to the Department by consumers requesting this data and utilities have done so.
- Subsection (d), paragraph (1), and subparagraphs (1)(A) and (B) would be adopted for conformance with federal regulations (40CFR 141.153(d)(2), (d)(3)(i) and (ii), respectively). The year "1999" is used in paragraph (1) for consistence with the first California Report being sent out in the year 2000 (see above). The reference to federal

regulations is consistent with the federal approach in their regulations; the Department chose the same approach because the referenced regulations consist of an extensive set of monitoring and analytical methodology requirements for a federally-implemented data collection effort which has already been completed. There would be absolutely no benefit to incorporating the requirements themselves. The affected regulated community has already complied with the requirements and submitted their data to EPA. The reference is necessary to clearly identify the data that must be included in the Report.

- Note that in subparagraph (d)(1)(A), the Department has proposed that 9 years be the limit for data use versus the federal “5 years”; the reason for this is that the regulations allow water systems to monitor for a few contaminants at intervals ranging up to 9 years and the Department wants to ensure that such data would be included in the Report.
- Subparagraph (d)(1)(B) has been slightly revised for clarity to specify exactly how the data should be interpreted for the Report.
- Paragraph (d)(2) and subparagraphs (2)(A) through (D) would be adopted for conformance with federal regulations (40CFR 141.153(d)(4)).
- Subparagraph (d)(2)(B) differs from the federal requirement in that it specifies that the PHG should be used if it has been set, instead of the MCLG, pursuant to section 116470(f), H&S Code. Since the PHG and MCLG are comparable in terms of designating levels of “no known risk to the public”, although not necessarily the same levels due to differences in scientific judgement and conventions for their establishment, the Department believes that the intent of the federal requirement would be duly met.
- Subparagraph (d)(2)(D)1. through 3., and 5. would be adopted for conformance with federal regulations (40CFR 141.153(d)(4)(iv)). The federal wording has been revised and expanded for clarity; the revisions are consistent with federal intent. The federal language was confusing and not specific enough to clearly establish how the data were to be summarized for the Report
- Subparagraph (d)(2)(D)4. would be adopted to clarify that if treatment has been installed to remove a contaminant (e.g., DBCP), then the compliance

monitoring conducted on the treated water is to be included in the Report, rather than the source water compliance monitoring data, since the Report intent is to inform consumers what they are drinking. The lack of this specification in the federal regulations could lead to confusion.

- Subparagraph (d)(2)(E) would be adopted for conformance with federal regulations (40CFR 141.153(d)(4)(v)(B) and (C)). Note that the Department does not propose to adopt 40CFR 141.153(d)(4)(v)(A). California regulations do not require this type of monitoring; therefore, no such data is available for reporting.
- Subparagraph (d)(2)(F) would be adopted for conformance with federal regulations (40CFR 141.153(d)(4)(vi)).
- Subparagraph (d)(2)(G) would be adopted for conformance with federal regulations (40CFR 141.153(d)(4)(vii)).
- Subparagraph (d)(2)(H) would be adopted for conformance with federal regulations (40CFR 141.153(d)(4)(viii)).
- Subparagraph (d)(2)(I) would be adopted for conformance with federal regulations (40CFR 141.153(d)(4)(ix)). The Department is proposed to extend this requirement to the secondary MCL contaminants detected to provide information for the consumers on these regulated contaminants and be consistent with the requirements for the primary MCL contaminants.
- Paragraph (d)(3) Paragraph (d)(4) would be adopted for conformance with federal regulations (40CFR 141.153(d)(7)).
- Subsection (e) would be adopted for conformance with federal regulations (40CFR 141.153(e)(1)). The reference to federal regulations is consistent with the federal approach in their regulations; the Department chose the same approach because the referenced regulations consist of an extensive set of monitoring and analytical methodology requirements for a federally-implemented data collection effort which has already been completed. There would be absolutely no benefit to incorporating the requirements themselves. The affected regulated community has already complied with the requirements and submitted their data to EPA. The reference is necessary to clearly identify the data required in the Report.

- Subsection (f) would be adopted for conformance with federal regulations (40CFR 141.153(e)(2)).
- Subsection (g) would be adopted for conformance with federal regulations (40CFR 141.153(f)).
- Subsection (h) would be adopted for conformance with federal regulations (40CFR 141.153(g)).
- Subsection (i) would be adopted for conformance with federal regulations (40CFR 141.153(h)(1)). Note that the Department has made minor changes in the language consistent with federal intent and as allowed under the primacy requirements.
- Subsection (j) would be adopted for conformance with federal regulations (40CFR 141.154(a)). The federal provision for alternative language subject to state approval has been omitted because the language in the regulation has been thoroughly reviewed, and is comprehensive, informative, and valuable to consumers. In addition, the Department does not have the resources for reviewing and evaluating alternative language.
- Subsection (k) would be adopted for conformance with federal regulations (40CFR 141.153(h)(2)).
- Subsection (l) would be adopted for conformance with federal regulations (40CFR 141.153(h)(3)). The federal regulations gave states the responsibility for determining the significant non-English speaking population in a community to trigger notification in other languages so that non-English speaking residents could be adequately informed regarding water quality. The Department proposes to establish a criteria of 20% for this purpose. The 20% criteria is based on a survey of the Department's District Field Offices related to how the issue has been addressed in the past for the Annual Water Quality Reports; this issue was also discussed at great length by the National Drinking Water Advisory Committee workgroup established to develop the federal Report regulations. A population of 10% is generally not considered significant; requiring utilities to obtain translations for a population this size is not considered reasonable. A population of 20% is considered significant enough to merit the additional efforts and expense, and has historically been used in California for determining when outreach efforts related to water quality information should target non-English speaking peoples.

- Subsection (m) would be adopted for conformance with federal regulations (40CFR 141.153(h)(4)).

➤ Appendix 64481-A. Typical Origins of Contaminants with Primary MCLs.

This appendix would provide the typical origins of contaminants for contaminants with primary MCLs that are included in the Report, if the actual origin is not known. It would be adopted for conformance with federal regulations (40CFR Appendix (B) to Subpart O). The Department has made minor revisions in the text to provide additional information and for clarification as allowed under the primacy requirements for this rule. The Department also included typical origins for those contaminants regulated by the Department for which no federal language was provided.

➤ Appendix 64481-B. Typical Origins of Contaminants with Secondary MCLs.

This appendix would provide the typical origins of contaminants for contaminants with secondary MCLs that are included in the Report, if the actual origin is not known. It would provide consistency with the requirement for such information for primary MCL contaminants. The sources in the table were derived from an informal survey of engineering staff in the Department's Drinking Water Program, with followup review by other engineering staff..

➤ Appendix 64481-C. Health Effects Language for the Report – Microbiological Contaminants

This appendix would provide the language to be used in the Report for any MCL violations for microbiological contaminants and for turbidity, which is related in that it affects disinfection treatment. The language would be adopted for conformance with federal regulations (40CFR Appendix C to Subpart O, (1) through (3)). The Department has made minor revisions in the text to provide additional information and for clarification as allowed under the primacy requirements for this rule.

➤ Appendix 64481-D. Health effects language for the Report – Radioactive contaminants

This appendix would provide language to be used in the Report for any MCL violations for radioactive contaminants. The language for Gross Beta particle activity, Gross Alpha particle activity and combined Radium 226/228 would be adopted for conformance with federal regulations (40CFR Appendix C to Subpart O, (4) through (6)). The Department has made minor revisions in the text to provide additional information and for clarification as allowed under the primacy requirements for this rule. The language for Strontium-90, Tritium, and Uranium would be used in the Report for several radioactive contaminants for which state, but no federal, MCLs have been adopted. This language uses the same format as the federal language for other carcinogens, since these contaminants are carcinogens, and for uranium, additional language is included for kidney toxicity (draft 1997 Public Health Goal document for uranium; Federal Register (56)138, p. 33078, July 18, 1991, for Strontium-90 and Tritium which are both Beta particle emitters).

➤ Appendix 64481-E. Health Effects Language for the Report – Inorganic Contaminants

This appendix would provide language to be used in the Report for any MCL violations for inorganic contaminants. Except for the language for aluminum and nickel, the health effects language would be adopted for conformance with federal regulations (40CFR Appendix C to Subpart O, (7) through (22)). The Department has made minor revisions in the text to provide additional information and for clarification as allowed under the primacy requirements for this rule. Aluminum and nickel are two inorganic contaminants for which state, but no federal, MCLs have been adopted. Therefore, the Department derived language from the 1999 draft aluminum and nickel Cal/EPA Public Health Goal documents, using the same format as the federal language.

➤ Appendix 64481-F. Health Effects Language for the Report -- Volatile Organic Contaminants

The purpose of this section is to provide language to be used in the Report for any MCL violations for volatile organic contaminants. Except for the language for 1,1-dichloroethane, 1,3-dichloropropene, trichlorofluoromethane and 1,1,2-trichloro-1,2,2-trifluoroethane, the proposed wording would be adopted for conformance with federal regulations (40CFR Appendix C to Subpart O, (55) through (76)). The Department has made minor revisions in

the text to provide additional information and for clarification as allowed under the primacy requirements for this rule. The Department proposes to provide language to be used for the four chemicals listed above which have state, but no federal, MCLs. This language was developed from the Public Health Goal documents, using the same format as the federal language.

➤ **Appendix 64481-G. Health Effects Language for the Report – Synthetic Organic Contaminants**

This appendix would provide language to be used in the Report for any MCL violations for synthetic organic contaminants. Except for the language for bentazon, molinate (ordram), and thiobencarb, the proposed wording would be adopted for conformance with federal regulations (40CFR Appendix C to Subpart O, (23) through (54)). The Department has made minor revisions in the text to provide additional information and for clarification as allowed under the primacy requirements for this rule. The Department proposes to provide language to be used for the three chemicals listed above which have state, but no federal, MCLs. This language was developed from the Public Health Goal document for bentazon, the 1999 draft Public Health Goal document for thiobencarb, and the Proposed Maximum Contaminant Level document for molinate, using the same format as the federal language.

64482. Required Additional Health Information.

The purpose of this section is to specify additional information that must be included in the Report. The federal provision for alternative language subject to state approval for subsections (a through c) has been omitted because the language in the regulation has been thoroughly reviewed, and is comprehensive and informative, even if it is not a perfect fit for a particular water system. In addition, the Department does not have the resources for reviewing and evaluating alternative language.

- Subsection (a) would be adopted for conformance with federal regulations (40CFR 141.154(b)).
- Subsection (b) would be adopted for conformance with federal regulations (40CFR 141.154(c)). The Department revised the federal language to include a caution for

pregnant women pursuant to the 1997 Cal/EPA Office of Environmental Health Hazard Assessment's Public Health Goal document for nitrate.

- Subsection (c) would be adopted for conformance with federal regulations (40CFR 141.154(d)).
- Subsection (d) would be adopted for conformance with federal regulations (40 CFR 141.154(e), Federal Register 63(241), 69475, December 16, 1998)).

64483. Report Delivery and Recordkeeping.

The purpose of this section is to establish how and when the Report is to be delivered and made available to the public, how the state is to be notified of the delivery and how long water systems are to retain Report copies. Subsections (a) through (g) would be adopted for conformance with federal regulations (40CFR 141.155(a) through (f) and (h)). Note that the Department is not required to adopt the provision for waivers in 40 CFR 141.155(g).